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Supreme Court of the United States

OCTOBER TERM, 1953

No. 11, Original

THE STATE OF MISSISSIPPI, *Complainant*

v.

THE STATE OF LOUISIANA

ANSWER TO BILL OF COMPLAINT

ROBERT F. KENNON,
Governor of the State of Louisiana.

FRED S. LEBLANC,
Attorney General of the State of Louisiana.

W. C. PERRAULT,
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CARROLL BUCK,
Second Assistant Attorney General, State of Louisiana.

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Assistant Attorney General, State of Louisiana.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

Comes now the State of Louisiana, through Robert F. Kennon and Fred S. LeBlanc, Governor and Attorney General, respectively, of said state, and also represented herein by the within named Assistant Attorneys General of the state aforesaid, and in compliance with the order of this Honorable Court, dated June 17, 1953, commanding the State of Louisiana to appear before said court and answer to the complaint of the State of Mississippi, now respectfully answers said bill of complaint, as follows, to-wit:

(1)

Answering the first article of the bill of complaint, the State of Louisiana denies that a controversy exists between

the State of Mississippi and the State of Louisiana, relative to a portion of the boundary between said states.

Further answering said article the State of Louisiana makes the following averments, to wit:

(a) At no time prior to the filing of motion herein for leave to file bill of complaint had the State of Mississippi, acting through its Governor, Attorney General or other authorized officer, represented to the State of Louisiana, acting through its Governor, Attorney General or other authorized officer, that the State of Mississippi claimed the lands herein involved, or any part thereof, as constituting a portion of the territory of the State of Mississippi.

(b) At no time prior to the filing of motion herein for leave to file bill of complaint had the State of Louisiana, acting through its Governor, Attorney General or other authorized officer, been given any notice, official or otherwise, by the State of Mississippi, its Governor, Attorney General or other authorized officer, that any controversy existed at all between the two states as to a portion of the boundary separating the two states at or near any point of land known as Diamond Island or Diamond Island Towhead.

(c) Not at any time between the date on which the State of Mississippi was admitted into the Union and the date on which motion was herein filed for leave to file bill of complaint had the State of Mississippi, acting through its Governor, Attorney General or other authorized officer, given any notice, official or otherwise, to the State of Louisiana, its Governor, Attorney General or other authorized officer, that any tract of land known as Diamond Island, Diamond Island Towhead or Diamond Point was claimed as constituting a part of the territory of the State of Mississippi and that the State of Louisiana had encroached or was encroaching upon the sovereignty of the State of Mississippi by levying taxes or attempting to

boundary of that state to the east was in no manner affected by the boundary or boundaries established by the Act of Congress for the State of Mississippi when the latter named state was admitted into the union.

(e) That the County of Warren, State of Mississippi, is located on the Mississippi River in the geographical positions mentioned in the sixth article of the bill of complaint.

(f) That, after the two states mentioned were respectively admitted into the union, the Mississippi River changed channels to the west, north and south and still later to the east and south of the lands subsequently formed and known as Diamond Island or Diamond Island Towhead; and,

(g) That the shift in the channel or course of the river through the so-called chute "did gradually widen and deepen over a period of years, ... until finally the new channel . . . became the principal or main channel of the Mississippi River . . .", and that, over a period of years, alleged by the State of Louisiana to be many, in fact, the old channel to the north, west and south of Diamond Island or Diamond Island Towhead was "gradually filled by sedimentation and accretion" to said island or towhead.

Further answering the sixth article of the bill of complaint, the State of Louisana shows that the allegati s contained in said article are vague and indefinite. Pl tiff has not undertaken to allege any specific locations with respect to governmental subdivisions or sections, township and ranges through which the Mississippi River ran after forming new channels, nor has it mentioned any year or years in which such changes were made; therefore, in admitting that changes were made in the main channel of the Mississippi River since the two states above named were respectively admitted into the union, defendant does not intend to concede, nor does it in fact

admit, that such changes were made at places where plaintiff may attempt to show that they occurred, and in what year or years they took place.

Further answering the allegations contained in the sixth article of the bill of complaint, the State of Louisiana also shows that the declarations made by the State of Mississippi in said article, relative to the physical or natural forces causing changes in the channel of the Mississippi River to be made, the effects of such changes in land formation and topography or land erosion, accretion and sedimentation, and the consequences thereof, both factually and legally, are founded largely on conjecture and theory, constitute mere conclusions of the pleader, represent argument, and are self-serving in design and purpose; therefore, the State of Louisiana feels justified in declining to answer and be bound by any admissions except as to factual averments in the bill of complaint.

(7)

Except as may be hereinafter specially admitted, the State of Louisiana denies the allegations contained in the seventh article of the bill of complaint.

It is admitted:

(a) That lands known as Diamond Point, as they presently exist, lie generally to the south of Diamond Island and Diamond Island Towhead;

(b) That the said Diamond Point was formed as the result of action or change in the course or courses of the Mississippi River, subsequent to the admission of the States of Mississippi and Louisiana, respectively, into the union;

(c) That accretion was formed, with respect to Diamond Point, after such change or changes in the course and channel of the Mississippi River, but that the same

occurred and attached itself to dry lands within the territory of the State of Louisiana;

(d) That, in about the year 1933, the Corps of Engineers of the United States, acting in conjunction with the Mississippi River Commission of the United States, in work for the improvement of navigation of the Mississippi River and flood control, did make and effect an artificial cut-off across the neck of Diamond Point;

(e) That such cut-off created a new channel for the Mississippi River and has become the main channel of said river as it traverses or flows through a portion of Diamond Point;

(f) That the old channel has in part been gradually filled and closed by sedimentation and accretion; and,

(g) That Diamond Point has not washed entirely away.

Further answering the seventh article of the bill of complaint, the State of Louisiana alleges that no attempt was made by plaintiff in its bill of complaint to locate Diamond Point by governmental subdivisions, sections, townships and ranges. Because of such inadequacy, indefiniteness and vagueness, defendant can only admit that a change was made in the course or channel of the Mississippi River, at, through or adjacent to Diamond Point, as such lands presently exist, resulting in a separation of such lands, leaving the greater part to the west of the present channel of the Mississippi River and the remaining portion to the east of said river; but in so admitting, defendant does not concede that such change in the course of the river was made at places where plaintiff may attempt to show that it occurred.

Further answering the seventh article of the bill of complaint, the State of Louisiana shows that plaintiff's declarations as to changes in land formation or topography, the location of accretion, how the latter was formed, and the consequences thereof, following the

change in the course or channel of the Mississippi River, are based largely on conjecture and theory, constitute conclusions of the pleader, represent argument, and are self-serving in nature; therefore, the State of Louisiana feels justified in declining to answer and be bound by any admissions except as to factual averments in the bill of complaint.

(8)

Answering the eighth article of the bill of complaint, the State of Louisana denies all and singularly the allegations thereof particularly refuting the accuracy of the line which plaintiff represents as forming the boundary between the States of Mississippi and Louisiana.

(9)

Answering the ninth article of the bill of complaint, the State of Louisiana represents that not until the motion was herein filed for leave to file bill of complaint did the officials of the State of Louisiana have any cause, reason or occasion to take any position in regard to the purported and alleged boundary dispute. They knew of no such controversy, and complainant is in error in declaring what facts or alleged facts that Louisiana officials have denied or would deny.

The State of Louisiana, acting through its Governor and Attorney General, do deny complainant's representations as to the legal effect or effects of changes made by erosion, alluvium, deposition, making of chute cut-off, artificial cut-off, and the like, now for the first time Louisiana officials have had knowledge of an alleged boundary dispute and occasion to be heard. The State of Louisiana and its officials admit that said state and its taxing subdivisions have levied taxes upon the lands involved in this purported boundary dispute and that citizens of said state and persons claiming title under citizens thereof are asserting title

to such lands, but the State of Louisiana and its officials deny that such taxation and assertions of title constitute an encroachment on the sovereign rights and powers of the State of Mississippi and to the rights and titles by the State of Mississippi accorded to its citizens and persons claiming title to lands under the laws of the State of Mississippi.

(10)

The State of Louisiana admits that the maps, surveys, charts and other documents described in the tenth article of the bill of complaint have been filed with the Clerk of the Supreme Court of the United States of America and that they are a part of the bill of complaint. It is denied, however, that said documents are controlling or furnish proof of the position taken by the State of Mississippi in this purported boundary controversy.

(11)

Answering the eleventh article of the bill of complaint, the State of Louisiana denies that it has infringed the sovereignty of the State of Mississippi; refutes the necessity of an adjudication on a purported issue which does not involve that character of controversy between states with which Section 2 of Article III of the Constitution of the United States of America deals, and disputes the claim of the State of Mississippi to levy and collect taxes on the lands involved in this alleged boundary issue.

Further answering said bill of complaint, the State of Louisiana alleges that;

(12)

Defendant has hereinabove referred to Diamond Island and Diamond Island Towhead as being one large body of land, the same as complainant has done in its bill of complaint; however, it will be seen from maps and charts to be offered in evidence for the record in this suit that Dia-

mond Island and Diamond Island Towhead were separate tracts of land when islands were first formed in such vicinity as a result of change or changes made in the course and channel of the Mississippi River.

(13)

The present thread or thalweg of the main channel of the Mississippi River in the immediate vicinity of Diamond Island or Diamond Island Towhead, as it presently exists, forms in that specific area the boundary between the State of Mississippi and the State of Louisiana. Such island or islands, formed as a result of the Mississippi River changing its course through the cut-off chute and gradually, after many years, forming there its main channel, is or are located in a generally westward direction from the present thread or thalweg of the main channel of the Mississippi River and is a part and portion of the territory of the State of Louisiana.

(14)

Lands comprising what subsequently became Diamond Point and adjacent points and islands were situated within the territory of the State of Louisiana, even before an avulsion or sudden and precipitous action of the Mississippi River in or about the year 1904, caused the river to cut through a portion of such lands and to form Diamond Point and adjacent areas as islands. Such action of the river did not change or alter the pre-existing boundary between the State of Mississippi and the State of Louisiana.

When, in or about the year 1933, the Corps of Engineers of the United States, acting in conjunction with the Mississippi River Commission of the United States, made and effected an artificial cut-off across the neck of Diamond Point, the effect of such action was not to change or alter the boundary in such vicinity between the State of Mississippi and the State of Louisiana but lands constituting Diamond Point, both to the east and west of the artificial cut-off, remained within the territory of the State of Louis-

iana, and to the east and south of the artificial cut-off Louisiana territory extended to the thread of the main channel of the Mississippi River as that channel existed prior to the flow of the river through such artificial cut-off.

Further answering said bill of complaint, the State of Louisiana makes the following representations in support of the plea which it interposes and urges that the State of Mississippi has long recognized Diamond Island or Diamond Island Towhead and Diamond Point as being a part of the territory of the State of Louisiana and is estopped to deny the latter's claim that such lands lie within its boundaries;

(15)

The State of Louisiana and its taxing subdivisions have levied and collected taxes upon said lands for a great number of years, all with the knowledge of and without complaint or protest on the part of the State of Mississippi.

(16)

For more than a half-century prior to the filing of motion for leave to file bill of complaint herein, many conveyances have been made of portions of said lands in which the property was described as being located in Madison Parish, Louisiana and the deeds evidencing such conveyances were filed in the records of the clerk of court of said parish and state to constitute public notice. The State of Mississippi is charged with notice of all such transactions.

(17)

In about the year 1907 the Board of Commissioners for the Fifth Louisiana Levee District had these lands, together with others, surveyed, claiming title thereto and asserting the same to be within the territory of the State of Louisiana. The State of Mississippi is charged with notice of such action. But, for more than forty-five years

said state has done nothing to protest or to seek an annulment of such title and territorial assertions.

(18)

For many years, all with the knowledge of and without protest from the State of Mississippi, the Parish of Madison, Louisiana and the State of Louisiana have exercised general civil and criminal jurisdiction over such lands and the residents thereof; and, to the extent of its authorized functions, the Board of Commissioners of the Fifth Louisiana Levee District has exercised jurisdiction over such lands in part.

(19)

Finally answering said bill of complaint, the State of Louisiana shows the court that the State of Mississippi precipitated this boundary dispute by claiming lands to be within its territory which had long been recognized as comprising a part of the territory of the State of Louisiana, and said state has and must bear the burden of proof. The State of Louisiana has refuted the claims of the State of Mississippi and has alleged that the lands involved lie within the territorial boundaries of the State of Louisiana.

WHEREFORE, the State of Louisiana prays:

(1) That the bill of complaint herein filed be dismissed as failing to state or show a controversy between states, under Section 2, Article III of the Constitution of the United States of America.

(2) In the alternative, that defendant's plea of acquiescence and estoppel against complainant be sustained and the bill of complaint dismissed.

(3) In the further alternative, and in the alternative only, that said bill of complaint is not dismissed, there be judgment by your Honorable Court establishing the boundary line between the State of Mississippi and the State of Louisiana at such place or location, so as to place Diamond

Island or Diamond Island Towhead and Diamond Point within the confines of the territory of the State of Louisiana.

Respectfully submitted,

ROBERT F. KENNON,
Governor of the State of Louisiana.

FRED S. LEBLANC,
Attorney General,
State of Louisiana.

W. C. PERRAULT,
First Assistant Attorney General,
State of Louisiana.

CARROLL BUCK,
Second Assistant Attorney General,
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BAILEY WALSH,
Assistant Attorney General,
State of Louisiana.

JOHN L. MADDEN,
Assistant Attorney General,
State of Louisiana.

Certificate

This is to certify that copies of the within answer to bill of complaint have been served upon counsel of record of the State of Mississippi.

Washington, D. C.
August 12, 1953

BAILEY WALSH
Assistant Attorney General
State of Louisiana
Of Counsel For The
State of Louisiana